



## CALIFORNIA STATE BOARD OF EDUCATION

### MARCH 2004 AGENDA

<b>SUBJECT</b>  <i>No Child Left Behind (NCLB) Act of 2001 – Ed-Flex</i>	<input checked="" type="checkbox"/> <b>Action</b>
	<input checked="" type="checkbox"/> <b>Information</b>
	<input type="checkbox"/> <b>Public Hearing</b>

#### RECOMMENDATION

Staff recommends that the NCLB State Board Liaisons work with CDE and SBE staff to prepare and submit an application to the United States Department of Education (USDE) for California to qualify as an Ed-Flex state.

#### SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

*No Child Left Behind* required states to have fully addressed and implemented all components of the assessment and accountability system required under its predecessor, the *Improving America's Schools Act* (IASA), or face financial penalties. Because California had some components of the standards and assessment system that had not been fully developed or implemented, we received a timeline waiver that gave us an additional 18 months (until November 30, 2003) to complete the required system. California had addressed all outstanding issues and submitted evidence of full compliance to the USDE and is currently awaiting final approval of its standards and assessment system. A fully approved standards and assessment system is one of the basic criteria for eligibility to become an Ed-Flex state.

#### SUMMARY OF KEY ISSUES

This program allows the federal Secretary of Education to delegate to States the authority to waive certain federal education requirements (Programs Covered by the Ed-Flex Authority). Before a State could grant a waiver of any program requirement, it must determine that the underlying purposes of the affected program would continue to be met. For example, the State could not waive the requirement that all teachers must be highly qualified; however, the deadline by which teachers in a small rural school district must become highly qualified may be extended through the approval of a waiver. Certain federal requirements may not be waived, including those pertaining to health, safety, civil rights, provisions of the *Individuals with Disabilities Act* (IDEA), requirements relating to parental participation and involvement, and the accountability system.

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**FISCAL ANALYSIS (AS APPROPRIATE)**

Any State or LEA that does not abide by the mandates and provisions of NCLB is at risk of losing federal funding.

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**ATTACHMENT**

[Attachment 1](#): Ed-Flex Background Information (5 pages)

## **ED-FLEX**

### **Purpose**

Ed-Flex is a program that allows the U.S. Secretary of Education to delegate to States the authority to waive certain federal education requirements that may, in particular instances, impede local efforts to reform and improve education. It is designed to help districts and schools carry out educational reforms and raise the achievement levels of all children by providing increased flexibility in the implementation of federal education programs in exchange for enhanced accountability for the performance of students.

Ed-Flex is not a funding program. Rather, it is a program that delegates to States the authority to grant waivers of certain federal requirements.

### **Applicant Information**

While the Ed-Flex waiver authority is broad, certain fundamental requirements may not be waived, including those pertaining to health, safety, and civil rights, provisions of the *Individuals with Disabilities Education Act* (IDEA), and requirements related to parental participation and involvement. Before a State may grant a waiver of any program requirement, it must determine that the underlying purposes of the affected program would continue to be met. States also may not waive requirements pertaining to the SEA; Ed-Flex provides them with the authority to waive requirements for districts and schools.

Each Ed-Flex State is required to report annually on its monitoring of any waivers it has granted. Through these reports, States are to provide information about how Ed-Flex has supported the implementation of standards-based reform. Ed-Flex States are also required to report on the achievement results of schools and districts that have had waivers in place for two school years.

### **Programs Covered by the Ed-Flex Authority**

Under Ed-Flex, a State educational agency (SEA) can waive local requirements of the following State-administered formula grant programs:

- Title I, Part A of the *No Child Left Behind Act* (other than sections 1111 and 1116) (Improving the Academic Achievement of Disadvantaged Children)
- Title I, Part B, Subpart 3 of the *No Child Left Behind Act* (Even Start Family Literacy Programs) (NOTE: Ed-Flex states may not waive requirements of the new Reading First or Early Reading First Programs (subparts 1 and 2 of Part B of Title I))
- Title I, Part C of the *No Child Left Behind Act* (Education of Migratory Children)

- Title I, Part D of the *No Child Left Behind Act* (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk)
- Title I, Part F of the *No Child Left Behind Act* (Comprehensive School Reform)
- Title II, Part A, Subparts 2 and 3 of the *No Child Left Behind Act* (Teacher and Principal Training and Recruiting)
- Title II, Part D, Subpart 1 of the *No Child Left Behind Act* (Enhancing Education through Technology)
- Title III, Part B, Subpart 4 of the *No Child Left Behind Act* (Emergency Immigrant Education, if this program is funded)
- Title IV, Part A, Subpart 1 of the *No Child Left Behind Act* (Safe and Drug-Free Schools and Communities)
- Title V, Part A of the *No Child Left Behind Act* (Innovative Programs)
- The Carl D. Perkins Vocational and Technical Education Act

### Technical Assistance Checklist for SEAs

The U.S. Department of Education has created the following list of questions to assist State educational agencies (SEAs) that are interested in applying for Ed-Flex waiver authority. This section is intended to assist staff within the state agency to consider important steps that are needed to establish an effective waiver process. In addition, there are questions regarding the Ed-Flex eligibility requirements to help the SEA determine if it is ready to apply. However, the primary document to guide preparation of SEA applications for Ed-Flex authority is the Ed-Flex Guidance, which is also available on the U.S. Department of Education website:

<http://www.ed.gov/programs/edflex/legislation.html> .

The Guidance provides detailed explanations and information about the entire application process and should be used as the primary resource in applying to the U.S. Department of Education. Since Ed-Flex is a program that permits SEAs to waive federal education requirements that may impede local efforts to improve education, SEAs must create a waiver system with strong accountability safeguards.

### I. STATE EDUCATION AGENCY (SEA) ED-FLEX ELIGIBILITY

#### A.

- Has the SEA met the Title I eligibility requirements? (see Guidance, Part B)
- Has the SEA developed and implemented challenging state content standards?
- Has the SEA developed and implemented student performance standards?
- Has the SEA developed and implemented aligned assessments?
- Has the SEA developed and implemented school performance profiles?

How will the SEA demonstrate, convincingly, that each of the above requirements have been met?

**OR**

Has the SEA made substantial progress towards meeting the Title I requirements? (see Guidance, Parts B-4 and B-5)

- Has the SEA developed and implemented challenging state content standards and interim assessments?
- Has the SEA made substantial progress toward developing and implementing the performance standards and aligned assessments required under Title I?
- Has the SEA made substantial progress toward having local districts produce the individual school performance profiles? (see Guidance, Questions B-7 and B-8)

How will the SEA demonstrate, convincingly, that each of the above requirements has been met?

- A. How will the SEA demonstrate that it has mechanisms to hold districts and schools accountable for meeting the educational goals that are described in their local waiver application(s)? In what manner will the SEA demonstrate that it has implemented a serious accountability system that results in meaningful intervention in low-performing schools and districts? (see Guidance Question B-9)
- B. How will the SEA demonstrate that it has mechanisms for engaging in technical assistance and corrective actions which are consistent with section 1116 of Title I of the Elementary and Secondary Education Act (ESEA) for districts and schools that do not make adequate yearly progress? (see Guidance, Question B-2)
- C. Does the SEA have the authority to waive state statutory or regulatory requirements that relate to education? (see Guidance, Question B-10)

## **II. STATE EDUCATIONAL AGENCY'S (SEA's) APPLICATION PROCESS TO THE U.S. DEPARTMENT OF EDUCATION**

- A. Which staff will have the responsibility to assemble the evidence to demonstrate that the plan meets all of the Ed-Flex eligibility criteria? (see Guidance, Questions B-2 through B-10)
- B. Which staff will be involved with:
  - a. creating and managing the waiver process?
  - b. deciding on clear educational objectives that the SEA intends to meet under the Ed-Flex plan?
  - c. devising the public comment procedures and implementing them?

(see Guidance, Question C-1)

### **III. LOCAL APPLICATION PROCESS TO THE SEA**

- A. Will applications for Ed-Flex waivers be combined with applications for waivers of state education requirements, or will the SEA keep those as separate processes?
- B. Is there a system in place to track the waiver application and the waiver (if/once approved)?
- C. What organizational unit will be assigned to design the application and manage the review process?
- D. What various methods will the SEA use to make the applications easily available?
- E. What timeline will the SEA establish to complete the review of a waiver?
- F. Will there be deadlines for the receipt of waiver applications or will the SEA receive them on a rolling basis?
- G. How will applications be reviewed? Will there be a different review process for statewide waiver applications?

### **IV. MANAGEMENT OF WAIVER SYSTEM WITHIN THE SEA**

- A. How will the SEA monitor waiver recipients' progress in increasing student achievement or accomplishing other intended results of the waiver? Which staff will be given the responsibility of overseeing that system? (see Guidance, Question F-1)
- B. What procedures will the SEA use if a waiver recipient does NOT meet its stated goals? (see Guidance, Question F-2)
- C. Has the SEA developed a system to easily retrieve waiver information for evaluation, technical assistance, and monitoring purposes? (see Guidance, Question F-3)
- D. What system will the SEA establish to review and approve or deny waiver applications? For example, will the SEA establish a waiver board or committee and how will it be constituted? What will be the role of the SEA staff that administers the program that will be affected by the waivers (e.g., Title I, Class Size Reduction, and Eisenhower)? (see Guidance, Part F)
- E. What methods/systems will the SEA use to:

- collect the data needed to hold the waiver recipient accountable for 1) student achievement, and 2) the stated goals for the school or LEA as described in the application?
- track statistics on waivers (e.g. the number of waivers requested, denied, withdrawn, returned for additional information, and approved)?
- track statistics on the types of waivers granted (e.g. federal, state, programmatic, and administrative) and the recipients of the waivers (e.g. LEAs and individual schools)?
- track statistics on statewide waivers, if applicable to your SEA?

## **V. PROMOTION AND USE OF WAIVERS**

- A. How will the SEA use Ed-Flex to promote innovative strategies for educational improvements in schools and LEAs?
- B. How will the SEA provide technical assistance to schools and LEAs to encourage the appropriate use of waivers?
- C. What methods will the SEA use to alert the public about its intent to apply for Ed-Flex authority? Will these methods ensure that all segments of the public have access to the information, especially the parents of children who will be affected by the waivers? (see Guidance, Question C-2)
- D. How will the SEA maintain an ongoing effort to provide technical assistance to schools and LEAs about Ed-Flex?